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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 John Taheny,

10 Plaintiff,

11 v.

12 David Shinn, et al.,

13 Defendants.

14 No. CV-23-00194-PHX-JAT (ASB)

15 **ORDER**

16 Plaintiff John Taheny, who is currently confined in the Arizona State Prison
17 Complex-Tucson, brought this civil rights action pursuant to 42 U.S.C. § 1983. Defendants
18 move for summary judgment. (Doc. 43.) Plaintiff was informed of his rights and
19 obligations to respond pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en
banc) (Doc. 44), and he did not file a response.¹

20 **I. Background**

21 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated
22 Eighth Amendment claims against: (1) Defendants Buenacosa and Joshua in their
23 individual capacities (Count One), (2) Defendant Centurion (Count Two), and (3)
24 Defendant Shinn in his individual capacity and Defendant Thornell in his official capacity

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27 ¹ In Response to an Order to Show Cause, Plaintiff indicated that he intends to
28 prosecute this action. (Doc. 46.) Plaintiff offered no cause, however, for extending the
deadline to file a response to the motion for summary judgment and did not explain why
he did not timely seek an extension of time to file a response.

1 (Count Three), and medical negligence claims against all Defendants (Count Four). (Doc.
2 6.)

3 Defendants move for summary judgment on all claims.

4 **II. Legal Standard**

5 A court must grant summary judgment “if the movant shows that there is no genuine
6 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
7 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The
8 movant bears the initial responsibility of presenting the basis for its motion and identifying
9 those portions of the record, together with affidavits, if any, that it believes demonstrate
10 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

11 If the movant fails to carry its initial burden of production, the nonmovant need not
12 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,
13 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts
14 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
15 contention is material, i.e., a fact that might affect the outcome of the suit under the
16 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
17 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
18 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th
19 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its
20 favor, *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,
21 it must “come forward with specific facts showing that there is a genuine issue for trial.”
22 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal
23 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

24 At summary judgment, the judge’s function is not to weigh the evidence and
25 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,
26 477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw
27 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited
28 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

1 **III. Facts²**

2 On July 29, 2021, Plaintiff fell while playing basketball and suffered pain and
 3 immobility of his left hand; he submitted a Health Needs Request (HNR) the same day.
 4 (Doc. 1 at 3.) On July 30, 2021, Plaintiff went to medical and saw Registered Nurse (RN)
 5 Wilson for a left-hand injury with bruising and swelling. (Doc. 41 ¶ 5.) She instructed
 6 Plaintiff to submit a HNR for a nurse to evaluate his hand and prescribed ice three times
 7 per day and over-the-counter ibuprofen. (*Id.*; Doc. 1 at 3.) On July 31, 2021, Plaintiff was
 8 seen by RN Buenacosa in response to a HNR stating that his hand is hurt and swollen.
 9 (Doc. 41 ¶ 6.) RN Buenacosa observed that Plaintiff was not in acute distress, had swelling
 10 to his left first digit extending to base of second, third, and fourth digits, with bruising to
 11 the left first digit, tender to touch. (Doc. 41 ¶ 7.) Plaintiff's color to his hand and capillary
 12 refills were within normal limits and his skin felt warm and dry to touch. (*Id.*) Plaintiff's
 13 hand was wrapped in an ace bandage, and he was instructed to continue with medical ice
 14 and ibuprofen; he was informed that a provider would be notified "as soon as available on
 15 yard." (*Id.*) RN Buenacosa told Plaintiff that he would order x-rays and that x-rays would
 16 be scheduled for August 4, 2021. (Doc. 1 at 3.)

17 On August 8, 2021, Plaintiff saw RN Buenacosa in response to an August 7, 2021,
 18 HNR in which Plaintiff stated that he was still in pain from his hand injury, his hand is very
 19 weak and tingling, and he needs more ibuprofen and x-rays. (Doc. 41 ¶ 9.) Plaintiff
 20 complained of unresolved pain and swelling with limited movement to his left second
 21 finger. (*Id.*) It was observed that Plaintiff had swelling in the left second finger, some
 22 weakness in the handgrip due to pain and had limited movement, but he had no
 23 discoloration, and his capillary refill was within normal limits. (*Id.*) Plaintiff appeared

25 ² Because Plaintiff did not file a response or controverting statement of facts, the
 26 Court will consider Defendants' supported facts undisputed unless they are clearly
 27 controverted by Plaintiff's first-hand allegations in the verified Complaint or other
 28 evidence on the record. *See Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (Where the
 nonmovant is a pro se litigant, the Court must consider as evidence in opposition to
 summary judgment all the nonmovant's contentions set forth in a verified complaint or
 motion.).

1 alert and in no acute distress. (*Id.*) Plaintiff's finger was placed in a buddy splint for his
2 second digit, he was given more ibuprofen, and he was placed on the provider line. (*Id.*)

3 On August 10, 2021, Plaintiff saw NP Joshua for unresolved pain and swelling of
4 his left hand, with it affecting his third finger and difficulty flexing his hand. (*Id.* ¶ 10.)
5 Plaintiff stated that the swelling was slowly improving. (*Id.*) NP Joshua noted that Plaintiff
6 was alert and oriented, and in no acute distress, that there was mild swelling of the left
7 hand, with no redness or drainage, strength was three out of five, and Plaintiff was unable
8 to fully flex his second finger. (*Id.*) NP Joshua submitted a STAT request for x-rays,
9 recommended warm compression, and to continue with non-steroidal anti-inflammatory
10 drugs. (*Id.*) Plaintiff's finger was wrapped to reduce swelling. (*Id.*)

11 Plaintiff submitted a HNR on August 13, 2021 asserting that this was his third HNR
12 and still did not know what was going on with his hand. (*Id.* ¶ 11.) Plaintiff stated that he
13 continued to experience swelling, difficulty moving his finger, and that an x-ray had not
14 yet been taken. (*Id.*) On the same day, Plaintiff saw NP Joshua, at which time he also
15 complained that the requested x-rays had not yet been taken. (*Id.* ¶ 12.) Plaintiff was
16 instructed to wrap his hand with ACE bandage and apply ice. (*Id.*) NP Joshua submitted
17 a consultation request to send Plaintiff to the emergency room for swelling. (*Id.*)

18 The same day, Plaintiff was taken to Yuma Regional Medical Center for a left-hand
19 injury, extreme swelling and numbness. (*Id.* ¶ 13.) Plaintiff was diagnosed with a closed
20 displaced fracture of the second metacarpal bone, was placed in a volar splint, was
21 prescribed Naproxen, and recommended to see Todd Runyan, an orthopedic specialist.
22 (*Id.*)

23 On August 14, 2021, NP Curd reviewed the after-visit summary report from the
24 hospital and submitted a consultation request for an offsite visit to orthopedic specialist,
25 Dr. Runyan. (*Id.* ¶ 18.) On August 16, 2021, Plaintiff saw Physician Assistant (PA) Sidi
26 for a follow up after his emergency room visit. (*Id.* ¶ 19.) PA Sidi recommended an urgent
27 consultation with an orthopedic specialist, continued use of ibuprofen, and that Plaintiff
28 should return to clinic if he had any worsening pain, swelling, erythema, warmth,

1 numbness, and tingling. (*Id.*)

2 On August 18, 2021, Plaintiff had a follow up visit with Dr. Runyan, and he
3 recommended Plaintiff return for a subsequent follow up. (*Id.* ¶ 20.) Plaintiff was
4 evaluated and diagnosed with a left hand closed fracture, and his left lower arm and hand
5 were placed in a soft cast. (*Id.*) Plaintiff was able to move his fingers with no signs of
6 impeding circulation noted. (*Id.*)

7 On August 19, 2021, onsite x-rays (taken on August 10, 2021) of Plaintiff's hand
8 that showed an age-indeterminate fracture of the neck of the second metacarpal with mild
9 displacement of the distal fragment. (*Id.* ¶ 21.) On August 20, 2021, Plaintiff was notified
10 of the results and informed he would be scheduled for a follow up. (*Id.*) On August 23,
11 2021, per Dr. Runyan's request, Nurse Practitioner (NP) Curd created a consultation
12 request for an offsite visit for a follow with his office. (*Id.* ¶ 22.)

13 On September 16, 2021, Plaintiff submitted a HNR, inquiring about the status of a
14 follow up with a hand specialist, and was concerned that if the treatment plan set forth by
15 the specialist was not followed, it would not go well for him. (*Id.*) Plaintiff was informed
16 that the consultation was under review and, due to COVID, scheduling was still difficult.
17 (*Id.*)

18 On October 18, 2021, Dr. Runyan saw Plaintiff and he did not require any additional
19 follow up appointments with his office. (*Id.* ¶ 24.) On November 22, 2021, Plaintiff
20 submitted a HNR complaining that after the removal of his cast, he was experiencing
21 nagging pain, continued swelling and stiffness, and asserted he was exercising his hand.
22 (*Id.* ¶ 25.) The same day, RN Buenacosa saw Plaintiff and Plaintiff reported that he had
23 been doing exercises to get back to normal and that over-the-counter ibuprofen was not
24 addressing his pain. (*Id.* ¶ 26.) Plaintiff was alert and in no acute distress and his left hand
25 color and capillary refill were within normal limits. (*Id.*) It was noted that the bilateral
26 handgrips were strong, but that the left handgrip was weaker due to pain. (*Id.*) Plaintiff
27 was informed that his complaints would be forwarded to a provider for review. (*Id.*) NP
28 Joshua reviewed this record on November 22, 2021. (Doc. 41-1 at 64.)

1 On December 10, 2021, Plaintiff submitted a HNR requesting a follow up because
2 he continued to experience pain, stiffness, lack of mobility and strength in his hand. (*Id.* ¶
3 27.) The next day, Plaintiff saw RN Buenacosa and Buenacosa continued ibuprofen and
4 instructed Plaintiff to avoid strenuous activities. (*Id.* ¶ 28.)

5 On December 22, 2021, Nursing Director Carli Myers placed an order for x-rays of
6 Plaintiff's left hand to compare to the August 2021 images; x-rays were taken on December
7 29, 2021 and the results appeared to be within normal limits. (*Id.* ¶ 31.) Plaintiff was
8 encouraged to submit a HNR if he continued to experience pain. (*Id.*)

9 On February 3, 2022, Plaintiff submitted a HNR asking for the results of his x-rays
10 and stated that he continues to experience pain, discomfort, and weakness in his hand. (*Id.*
11 ¶ 32.) Plaintiff was seen on the nurses' line. (*Id.*) On February 4, 2022, Plaintiff saw RN
12 Conley for complaints of continued hand pain, discomfort, and weakness. (*Id.* ¶ 33.) Plaintiff
13 complained that he was not able to fully extend his left index finger and that his
14 finger appeared shorter than his right and his hand grip was uneven as he could not close
15 his left index finger; he was alerted that x-rays of the hand taken in December appeared
16 normal, but the RN submitted a request so Plaintiff could see a provider and ibuprofen was
17 continued. (*Id.*)

18 Plaintiff saw NP Peeks on February 8, 2022, and he complained of continued left-
19 hand pain and weakness in pointer finger. (*Id.* ¶ 34.) An evaluation was performed, and it
20 was noted that Plaintiff had decreased strength in his left pointer finger. (*Id.*) A
21 consultation request was made for a referral to onsite physical therapy. (*Id.*) Plaintiff
22 began physical therapy on February 15, 2022, and attended seven sessions. (*Id.* ¶ 35.)

23 On March 15, 2022, Plaintiff complained to PT Farley of left hand and wrist pain,
24 with weakness, at which time PT Farley recommended Plaintiff use an ace bandage and
25 gave him home exercises. (*Id.* ¶ 36.) On May 3, 2022, Plaintiff saw PT Farley for
26 complaints for left wrist pain and secondary metacarpophalangeal (MCP) pain. (*Id.* ¶ 37.)
27 PT Farley stated that Plaintiff would benefit from ice three times a day to address his left
28 wrist pain. (*Id.*)

1 Plaintiff submitted a HNR on May 4, 2022, complaining of continued pain in his
2 hand and wrist after participating in physical therapy. (*Id.* ¶ 38.) He complained that his
3 hand was very weak and lacked strength and mobility. (*Id.*) Plaintiff was placed on the
4 nurses' line. (*Id.*) That same day, Plaintiff saw RN Amaral and requested a steroid
5 injection. (*Id.* ¶ 39.) RN Amaral noted that Plaintiff's left hand first knuckle appeared
6 slightly depressed looking, with limited range of motion and pain complaints. (*Id.*) Plaintiff
7 asserted that over-the-counter pain medications did not address his pain. (*Id.*) RN
8 Amaral referred Plaintiff to the provider line for evaluation for a possible steroid injection.
9 (*Id.*)

10 On May 9, 2022, Plaintiff saw PA Sidi for left hand and wrist concerns that he has
11 been experiencing for the last 2-3 months. (*Id.* ¶ 40.) Plaintiff was referred to physical
12 therapy and scheduled for a follow-up. (*Id.*) On May 10, 2022, Plaintiff saw PT Farley,
13 who noted that Plaintiff showed progress, however, if Plaintiff showed continued minimal
14 progress, then Farley would recommend another x-ray or seeing a hand therapist. (*Id.* ¶
15 41.)

16 On June 2, 2022, Plaintiff saw PA Sidi for a follow-up regarding his pointer finger
17 on his left hand and the MCP joint and wrist discomfort and complained that the home
18 exercises from physical therapy have done little to help him. (*Id.* ¶ 42.) Sidi noted that
19 Plaintiff's main concern is his ability to use his dexterity and performing his job after he is
20 released from prison. (*Id.*) PA Sidi discussed risks of potential surgical intervention versus
21 conservative management. (*Id.*) PA Sidi recommended consulting with physical therapy
22 regarding the home exercises program. (*Id.*)

23 **IV. Discussion**

24 Defendants assert that they are entitled to summary judgment because Plaintiff's
25 providers were not deliberately indifferent to Plaintiff's serious medical needs, Plaintiff
26 has not shown that he was subject to a constitutional deprivation due to a policy, practice,
27 or custom of Centurion or Director Thornell, Plaintiff's claim for injunctive relief is moot,
28 and there is no evidence that Defendants violated any standard of care.

A. Eighth Amendment

To prevail on an Eighth Amendment medical claim, a prisoner must demonstrate “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). There are two prongs to this analysis: an objective prong and a subjective prong. First, as to the objective prong, a prisoner must show a “serious medical need.” *Jett*, 439 F.3d at 1096 (citations omitted). A “‘serious’ medical need exists if the failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation omitted).

11 Second, as to the subjective prong, a prisoner must show that the defendant's
12 response to that need was deliberately indifferent. *Jett*, 439 F.3d at 1096. An official acts
13 with deliberate indifference if he "knows of and disregards an excessive risk to inmate
14 health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). To satisfy the knowledge
15 component, the official must both "be aware of facts from which the inference could be
16 drawn that a substantial risk of serious harm exists, and he must also draw the inference."
17 *Id.* "Prison officials are deliberately indifferent to a prisoner's serious medical needs when
18 they deny, delay, or intentionally interfere with medical treatment," *Hallett v. Morgan*, 296
19 F.3d 732, 744 (9th Cir. 2002) (internal citations and quotation marks omitted), or when
20 they fail to respond to a prisoner's pain or possible medical need, *Jett*, 439 F.3d at 1096.
21 But the deliberate-indifference doctrine is limited; an inadvertent failure to provide
22 adequate medical care or negligence in diagnosing or treating a medical condition does not
23 support an Eighth Amendment claim. *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir.
24 2012) (citations omitted); *see Estelle*, 429 U.S. at 106 (negligence does not rise to the level
25 of a constitutional violation). Further, a mere difference in medical opinion does not
26 establish deliberate indifference. *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996);
27 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

1 Deliberate indifference is a higher standard than negligence or lack of ordinary due
2 care for the prisoner's safety. *Farmer*, 511 U.S. at 835. "Neither negligence nor gross
3 negligence will constitute deliberate indifference." *Clement v. California Dep't of Corrs.*,
4 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d
5 458, 460 (9th Cir. 1980) (mere claims of "indifference," "negligence," or "medical
6 malpractice" do not support a claim under § 1983). A mere delay in medical care, without
7 more, is insufficient to state a claim against prison officials for deliberate indifference. *See*
8 *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985). The
9 indifference must be substantial. The action must rise to a level of "unnecessary and
10 wanton infliction of pain." *Estelle*, 429 U.S. at 105. Even if deliberate indifference is
11 shown, to support an Eighth Amendment claim, the prisoner must demonstrate harm
12 caused by the indifference. *Jett*, 439 F.3d at 1096.

13 In this case, Plaintiff had a serious medical need. *See McGuckin*, 974 F.2d at 1059-
14 60 (a serious medical need exists if there is an injury "that a reasonable doctor or patient
15 would find important and worthy of comment or treatment"). The Court must therefore
16 determine whether there is evidence that each Defendant was deliberately indifferent to
17 Plaintiff's serious medical need. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988)
18 (the inquiry into a defendant's liability for deliberate indifference "must be individualized
19 and focus on the duties and responsibilities of each individual defendant whose acts or
20 omissions are alleged to have caused a constitutional deprivation."); *Rizzo v. Goode*, 423
21 U.S. 362, 370-71, 375-77 (1976).

22 **1. Thornell**

23 Defendant Thornell was substituted in his official capacity only to provide any
24 prospective injunctive relief. Plaintiff, however, was released from ADC custody on
25 December 27, 2024. Accordingly, Plaintiff's request for injunctive relief is moot, and
26 Defendant Thornell must be dismissed from this action. *See Jones v. Williams*, 791 F.3d
27 1023, 1031 (9th Cir. 2015) ("Once an inmate is removed from the environment in which
28 he is subjected to the challenged policy or practice, absent a claim for damages, he no

1 longer has a legally cognizable interest in a judicial decision on the merits of his claim.”)
 2 (quoting *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012)).

3 **2. Joshua**

4 Defendants assert that Joshua was not deliberately indifferent to Plaintiff’s serious
 5 medical needs. Defendant Joshua saw Plaintiff on two occasions, and on the first occasion,
 6 submitted an urgent request for x-rays, wrapped Plaintiff finger, recommended warm
 7 compression and to continue with anti-inflammatory drugs. On the second occasion,
 8 Joshua wrapped Plaintiff’s hand and sent him to the hospital.

9 The evidence before the Court does not show that Joshua was deliberately
 10 indifferent to Plaintiff’s serious medical needs. The evidence shows that Joshua treated
 11 Plaintiff and ordered urgent x-rays during their first encounter, and when Plaintiff returned
 12 to her, she immediately referred Plaintiff to the hospital. Nothing in these actions suggests
 13 that Joshua deliberately disregarded a serious risk to Plaintiff health. Accordingly,
 14 summary judgment will be granted in favor of Defendant Joshua.

15 **3. Buenacosa**

16 Defendant Buenacosa argues that he was not deliberately indifferent to Plaintiff’s
 17 serious medical needs, but rather evaluated and treated Plaintiff conservatively and referred
 18 Plaintiff to a the “provider’s line” each time Plaintiff saw Buenacosa on the nurse’s line.
 19 Indeed, the evidence before the Court shows that Buenacosa was responsive to Plaintiff’s
 20 complaints and Buenacosa put Plaintiff on the provider’s line for further evaluation each
 21 time Buenacosa saw Plaintiff. Accordingly, on this record, there is no evidence that
 22 Buenacosa was deliberately indifferent to Plaintiff’s serious medical needs and summary
 23 judgment will be granted in favor of Defendant Buenacosa.

24 **4. Centurion and Shinn**

25 To prevail on a claim against Centurion, as a private entity serving a traditional
 26 public function, Plaintiff must meet the test articulated in *Monell v. Department of Social*
 27 *Services of City of New York*, 436 U.S. 658, 690-94 (1978). *Tsao v. Desert Palace, Inc.*,
 28 698 F.3d 1128, 1139 (9th Cir. 2012) (applying *Monell* to private entities acting under color

1 of state law). Likewise, to prevail on a claim against Shinn based on a policy, practice, or
 2 custom claim, Plaintiff must show that an official policy or custom caused the
 3 constitutional violation. *Monell*, 436 U.S. at 694.

4 To make this showing, he must demonstrate that (1) he was deprived of a
 5 constitutional right; (2) Centurion and/or Shinn had a policy or custom; (3) the policy or
 6 custom amounted to deliberate indifference to Plaintiff's constitutional right; and (4) the
 7 policy or custom was the moving force behind the constitutional violation. *Mabe v. San*
 8 *Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1110-11 (9th Cir. 2001).
 9 Further, if the policy or custom in question is an unwritten one, the plaintiff must show that
 10 it is so "persistent and widespread" that it constitutes a "permanent and well settled"
 11 practice. *Monell*, 436 U.S. at 691 (internal quotation and citation omitted). "Liability for
 12 improper custom may not be predicated on isolated or sporadic incidents; it must be
 13 founded upon practices of sufficient duration, frequency and consistency that the conduct
 14 has become a traditional method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911,
 15 918 (9th Cir. 1996).

16 As discussed above, Plaintiff has not shown that he was deprived of his Eighth
 17 Amendment rights, and thus cannot show that such deprivation is attributable to a policy,
 18 practice or custom of Centurion or Shinn. Accordingly, summary judgment will be granted
 19 in favor of Centurion and Shinn.

20 **B. Negligence**

21 Defendants assert that they are entitled to summary judgment on Plaintiff's
 22 negligence claim because Plaintiff has not produced any evidence or expert testimony of
 23 the standard of care or that Defendants breached the standard of care.

24 "'Medical malpractice action' or 'cause of action for medical malpractice' means
 25 an action for injury or death against a licensed health care provider . . ." Ariz. Rev. Stat.
 26 § 12-561.

27 Both of the following shall be necessary elements of
 28 proof that injury resulted from the failure of a health care
 provider to follow the accepted standard of care:

1 1. The health care provider failed to exercise that degree
2 of care, skill and learning expected of a reasonable, prudent
3 health care provider in the profession or class to which he
4 belongs within the state acting in the same or similar
5 circumstances.

6 2. Such failure was a proximate cause of the injury.

7 Ariz. Rev. Stat. § 12-563. Unless medical malpractice is grossly apparent, the standard of
8 care must be established by expert medical testimony. *Rasor v. Northwest Hosp.*, 403 P.3d
9 572 (Ariz. Ct. App. 2017); *Peacock v. Samaritan Health Svc.*, 765 P.2d 525 (Ariz. Ct. App.
10 1988).

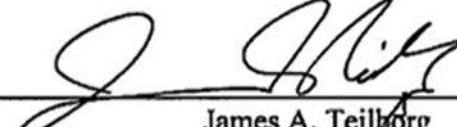
11 Here, Plaintiff has not shown that medical malpractice is “grossly apparent” and
12 Plaintiff has not designated any experts to support his medical malpractice claim against
13 Defendants. Accordingly, summary judgment will be granted in favor of Defendants as to
14 the medical malpractice claim.

15 **IT IS ORDERED:**

16 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendants’
17 Motion for Summary Judgment (Doc. 43).

18 (2) Defendants’ Motion for Summary Judgment (Doc. 43) is **granted**, and the
19 action is terminated with prejudice. The Clerk of Court must enter judgment accordingly.

20 Dated this 6th day of January, 2025.

21 
22 _____
23 James A. Teilborg
24 Senior United States District Judge